IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7976 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAVINSINH RANJITSINH VAGHELA

Versus

STATE OF GUJARAT

Appearance:

Mr.Mehul S. Shah, with

MR SURESH M SHAH for Petitioner

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER,

for Respondent No. 1, 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/03/2001

ORAL JUDGEMENT

1. The petitioner was appointed as Unarmed Police Constable on 1.8.1981 and after his appointment, he was sent for training. After completing the training, he was given Badge No.6414. Thereafter, he met with an unfortunate accident on 11.10.1981 while he was

travelling by S.T. Bus and he received severe injury, which resulted in amputation of his right hand from the point of elbow.

2. After recovering from the same, he went to resume his duty, but he was not allowed to resume the same and he was sent for medical opinion. The Civil Surgeon, by his report dated 4.3.1982, certified that the petitioner is not suitable for the job of Constable, but he can do the clerical job. Mr.Shah for the petitioner states that though, by mistake, in the copy of the original order, it is mentioned that he is suitable for the job of constable, that is a mistake, and, according to him, in the original certificate, he is found not suitable for the job of constable, but was found fit for clerical job. It is also found by the Civil Surgeon that he can write with his left hand.

3. On the basis of the aforesaid certificate, the petitioner made an attempt for getting appointment on the post of Clerk. The Deputy Police Commissioner, Ahmedabad City, by his letter dated 14.4.1982, informed the petitioner that if he is interested to be appointed either on the post of Clerk or Peon, he may apply and, thereafter, his case will be considered. The aforesaid letter is produced at Annexure `B' to the petition at page 13. The petitioner thereafter made an application to the Chief Minister, Home Minister and Inspector General of Police on 2.11.1982 for giving alternative employment in the Department. Thereafter, the petitioner was asked by the Administrative Officer from the Office of the Police Commissioner to give particulars about the compensation which he might have received from the S.T. Corporation in view of the accident in question.

4. The petitioner therafter wrote a letter on 31.7.1989 to the aforesaid query, in which he has pointed that he has already sent a copy of the Award passed by the Motor Accidents Claims Tribunal. He has also stated that he is ready even to serve on the post of Peon. He also further requested that as a special case, he may be given appointment as he is clamouring for getting appointment since 9 years. Therafter, by an order dated 2.8.1989, the petitioner was informed by the Administrative Officer that the proposal is already sent to the State Government regarding question of giving appointment to the petitioner on compassionate ground. Thereafter, by another letter dated 12.9.1989, the petitioner was informed that the Government has not accepted the request of the petitioner for giving him alternative employment for the post of Junior Clerk.

There is no mention in the said letter about the request of the petitioner for giving him appointment even on the post of Peon. The petitioner, therefore, has filed this petition and he has prayed that the State Government may be directed to give the petitioner alternative employment either as Clerk or as Peon.

5. It is a matter of regret that since 1982, the petitioner is begging for employment in view of the unfortunate incident happened. It is not in dispute that he was regularly selected and appointed on the post of Unarmed Police Constable, but, because of the accident in question, his services were required to be terminated since his right hand was amputated from the point of elbow, and he was not found fit for the post in which he was already appointed.

6. Under these circumstances, the petitioner requested the Department to give him any alternative employment either as a Clerk or as a Peon. The Civil Surgeon had certified as back as in March, 1982 that the petitioner can do clerical job as he can also write with his left hand. Not only that, by letter dated 14.4.1982, the Deputy Police Commissioner has asked the petitioner to apply for the post of Clerk or as Peon and the petitioner applied for the same and ultimately, without giving any reason in the order, by letter dated 12.9.1989, the petitioner was informed that his request for appointment as Junior Clerk was not accepted by the Government. There is no mention in the order as to what happened for his request for appointment to the post of Peon.

7. Mr.Pancholi, learned AGP, however, argued that since the pay scale prescribed for Junior Clerk was higher at the relevant time, as compared to the pay scale of Unarmed Police Constable, it was not possible to appoint the petitioner on the post of Junior Clerk. In my view, there is absolutely no justification for taking such a harsh view. It is not in dispute that the petitioner was regularly recruited as unarmed police constable and because of physical incapacity, if he was not found fit for the aforesaid job, it was the duty of the Government as a model employer to consider his case for any other suitable employment.

8. Mr.Shah for the petitioner has relied upon provision of Rule 201(c) of the B.C.S.R., wherein it is provided as under :-

" ... ...

> ... if the Government servant is completely and permanently incapacitated for further service in the Department to which he belongs or of the alternative certificate (of partial incapacity) in the foregoing clause is that a Government servant should, if possible, be employed even on lower pay, so that the expense of pensioning him may be avoided. If there be no means of employing him even on lower pay, then he may be admitted to pension.
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> ... ... "

9. Of course, the aforesaid provision, ipso facto, cannot be said to be applicable so far as the facts of the present case are concerned, because it is in relation to giving pensionary benefit to the Government servant if he has become incapable of performing duty because of physical ailment. However, in the instant case, when the petitioner has shown his willingness to be appointed even as a Peon and the scale of the aforesaid post of Peon is lower than that of the Unarmed Police Constable, and the said fact is also confirmed by the learned AGP to the effect that the pay scale of Peon would naturally be either less or at the most, equivalent to the post of Unarmed Police Constable, there is no reason why the Department has not made any attempt to appoint the petitioner on the post of Peon in Government Department. These are the cases in which sympathetic and humane considerations are required to be meted out by the Government.

10. Mr.Shah has relied upon the judgment of the Supreme Court in Narendra Kumar Chandia v. State of Haryana and others, AIR 1995 SC 519. It has been observed as under in paragraph 7 of the said judgment :-

> " ... ...
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> Article 21 protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge the duties as a Carrier Attendant is unjust. Since he is

> a matriculate; he is eligible for the post of L.D.C. For L.D.C., apart from matriculation, passing in typing test either in Hindi or English at the speed of 15/30 words per minute is necessary. For a Clerk, typing generally is not a must. In view of the facts and circumstances of this case, we direct the respondent Board to relax his passing of typing test and to appoint him as a L.D.C. Admittedly on the date when he had unfortunate operation, he was drawing the salary in the pay scale of Rs.1400-2300. Necessarily, therefore, his last drawn pay have to be protected. Since he has been rehabilitated in the post of L.D.C. we direct the respondent to appoint him to the post of L.D.C. protecting his scale of pay of Rs.1400-2300 and direct to pay all the arrears of salary.
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> ... ... "

In the instant case, the petitioner, who met with an unfortunate accident while travelling in the State Road Transport Corporation bus, was subjected to amputation of his right hand from the point of elbow. As back as in 1982, the Civil Surgeon found that he can perform the clerical work. He was even in a position to write with his left hand. It is, therefore, difficult to understand the logic on the part of the respondents to take such casual approach in such matter and to reject his claim by writing two lines, stating that the Government has not accepted his request. It is absolutely unjust on the part of the Authority not even to consider the claim of the petitioner for appointment on the post of Peon. In a civilised society, a person who is physically handicapped is required to be treated with sympathy. In Government service, there is even a special quota reserved for such category. The petitioner was already in service of the Government when he met with the accident and prompt action was required to be taken by the authority concerned to absorb him on any other alternative post, where he could have performed his duty without putting him to further agony of making representations from time to time and without asking him to go to the Civil Surgeon. It is unfortunate that even such type of cases are also taken in an absolutely casual manner. Under these circumstances, since 1982, the petitioner is clamouring for getting his bread and till today, he is unable to get his claim adjudicated. Such

type of cases are required to be taken on top priority basis so that the further suffering of such person can be put to an end.

11. The facts of the case indicated above clearly show how mechanically the orders have been passed and how the petitioner was subjected to being tossed from time to time. Even while informing the petitioner, no courtesy was shown to give details as to why it was not possible to accept his request for appointment for the post in question. In the first place, there was no necessity to send him to the Civil Surgeon if really the Government was of the opinion that it was not possible to absorb him on the aforesaid post of Clerk on the ground that the pay scale prescribed for the post of Clerk was higher than that of the Unarmed Police Constable. There was no necessity for giving such hope by sending him to the Civil Surgeon and asking from him particulars, etc. The facts of the case, therefore, clearly indicate how casually such type of matters are handled by the Department. Looking to the facts and circumstances of the case, therefore, the petitioner's case was required to be taken by giving top priority for the purpose of giving him appointment in the lowest category in the State Service, i.e. even on Class IV post. The action is not only arbitrary, but is absolutely unjust and inhumane, and there is total casual approach. It is hoped that such type of cases will be dealt with at the earliest by the concerned Department of the Government and will be dealt with, with proper application of mind. The present proceedings are of 1989 and till today, no affidavit-in-reply is filed. Even if, after such a long time, any alternative employment is given to the petitioner, that also would hardly serve the purpose because he has already undergone torture for all these years and has failed to get alternative employment for such a long period.

12. Looking to the facts and circumstances of the case, the Government is now required to be directed to consider the case of the petitioner even for the post of Peon or any other equivalent post immediately where the pay scale may not be higher than the pay scale he was holding as Unarmed Police Constable in the Police Department, and to pass appropriate order in this connection. The Government may also consider whether the petitioner can be accommodated even in the quota prescribed for physically handicapped person. It is needles to say that since the petitioner was already in employment of the Government and in view of the unfortunate incident his services were required to be

terminated, the question of offering alternative employment can definitely be considered without asking him again to register his name with the Employment Exchange. The State Government is directed to consider the aforesaid matter afresh and appropriate decision may be taken bearing in mind the judgment of the Apex Court in AIR 1995 SC 519 (supra).

13. The petition is accordingly allowed. The respondents are directed to consider the case of the petitioner for compassionate appointment on the post of Peon or any other equivalent post as per the observations made in earlier part of this order. The respondents accordingly may reconsider the entire question regarding giving employment to the petitioner, keeping in mind the aforesaid fact that considerable time has passed. Decision in this connection may be taken at the earliest, latest by 30th June, 2001. The State Government should see that the agony of the petitioner is not further prolonged by delaying the matter for taking decision. While taking the decision, the State Government may not take into consideration the question whether the petitioner is now over-aged or not especially when the petitioner was already in Government service and because of the subsequent event, now, his case is required to be considered for compassionate appointment.

Learned AGP Mr.Pancholi is requested to communicate this order to the Department so that there may not be any further delay.

14. Rule is accordingly made absolute. No order as to costs.

16th March, 2001 (P.B. Majmudar, J.)

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(apj)